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Charting a New Course on North Korea's Nuclear Programme?

The Options and the Non-Proliferation Treaty

Hanns Günther Hilpert and Oliver Meier

Should North Korea be recognised as a de facto nuclear power? Even after three nuclear tests the international discussion continues to tiptoe around this crucial question for the nuclear non-proliferation regime. The aftermath of the spring 2013 escalation only makes the problem more urgent. North Korea uses its nuclear weapons as a threat in diplomatic and security talks, has declared itself a nuclear-weapon state by constitutional amendment, and most recently openly threatened a nuclear strike against the United States and South Korea. Nonetheless, the international community adheres doggedly to the legal stance that North Korea is a non-nuclear-weapon state under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and must renounce nuclear arms. Given Pyongyang's repeated violations of the treaty this position is well founded. But in view of the power of the factual, it is legitimate to ask how long this position can and should be upheld. Why should the international community not treat North Korea like other nuclear powers outside the NPT?

From the point of view of international law the Democratic People's Republic of Korea (DPRK) must be treated as a non-nuclear-weapon state. Article 9 of the NPT reserves the status of nuclear-weapon state for the five nations that manufactured and exploded a nuclear weapon before 1 January 1967. North Korea formally confirmed its status as a non-nuclear-weapon state in the joint declaration of 1992 in which South and North Korea agreed to denuclearise the Korean Peninsula.

Until 2007 North Korea was at least rhetorically willing to renounce nuclear

arms. That hope was dashed by the spring 2013 escalation. After a successful satellite launch on 12 December 2012 and its third nuclear test on 12 February 2013, North Korea wishes to be treated as a nuclear-weapon state. Kim Jong-un has repeatedly stressed that North Korea's nuclear weapons are no longer negotiable.

At the same time the risk of military conflagration on the Korean Peninsula has increased rather than decreased. The fruitlessness of efforts to contain North Korea's nuclear risks and security threats begs the question of alternatives. Should

the international community maintain its strategy despite lack of success? Or should it accept the facts and recognise North Korea as a nuclear-weapon state? The danger to peace and stability posed by recurring nuclear crises places the United States and the international community under increasing pressure to justify ploughing on with an unaltered North Korea policy. It is worth examining the pros and cons of both options in the light of the declared objectives of that policy: to maintain peace and security in East Asia while protecting the viability of the nuclear non-proliferation regime.

Option 1: A New Realism

An explicit or implicit recognition of North Korean possession of nuclear arms would fundamentally alter the coordinates of the security talks with Pyongyang. Nuclear disarmament would no longer be the precondition or immediate goal of talks. There would be multilateral acceptance of North Korea's withdrawal from the NPT, and the demand for its nuclear programme to be placed under strict monitoring by the International Atomic Energy Agency (IAEA) would be dropped.

► Pro: Chance for De-escalation and International Integration

Any decision to accept North Korea as a nuclear power would certainly represent a diplomatic victory for Pyongyang, an admission by the United States and the international community that their non-proliferation efforts had failed. But precisely such a step could open the way for progress at the regional level. Acceptance of North Korea as a nuclear power would have a direct de-escalating effect on the Korean conflict, because Pyongyang's central demand for enhanced international status would have been fulfilled.

In the past, a pragmatic approach to North Korea's nuclear capability was already the basis for progress in negotiations.

The Agreed Framework of 1994 only came into being because the United States refrained from insisting on clarification of North Korea's nuclear status. At that time, North Korea agreed to renounce nuclear weapons in return for the promise of annual delivery of 500,000 tonnes of heavy fuel oil and the construction of two light-water reactors (through the Korean Peninsula Energy Development Organisation, KEDO). In the longer term both sides sought mutual diplomatic recognition and a peace treaty. The IAEA verified the "freeze" of the North Korean nuclear programme.

In the six-party talks North Korea and the United States (together with China, Japan, Russia and South Korea) agreed in September 2005 and February 2007 on North Korean nuclear disarmament in exchange for aid supplies and security guarantees. Here too, the participants did not even try to reach consensus over North Korea's nuclear status.

One argument for injecting pragmatism into dealings with North Korea is thus that recognition of its nuclear status is a precondition for agreeing a roadmap to normalise its relations with the United States (as well as with South Korea and Japan). In the medium term, fulfilling its elementary security demands would do more to pave the way for an effective integration of North Korea into the international system than keeping its legal and political status under the non-proliferation regime ambiguous. Loans from the Asian Development Bank, and possibly also reparation payments from Japan, could set in motion an economic development and transformation process in North Korea. The energies of the DPRK's government and elite would then be channelled primarily into economic improvement and personal enrichment rather than diplomatic and military confrontation. In the medium to long term, the totalitarian regime could be induced into more peaceful behaviour at home and abroad.

► **Contra: Dubious Security Gains**

Three reasons mitigate against recognising North Korea as a nuclear power: the unpredictable nature of its domestic and foreign policies, the likely impact on the regional balance of power, and the negative repercussions for the multilateral non-proliferation regime.

The expectation that recognition as a nuclear power would alter North Korea's external and internal behaviour could be fallacious. Even if the country's status were altered, the fundamental conflict would remain unresolved: North Korea is politically and economically incapable of sustaining the kind of national independence and self-determination it seeks.

With the country remaining dependent on external aid to secure the power of party, military and Kim family dynasty, the option of extorting foreign aid by diplomatic confrontation and nuclear threat could remain attractive even after a de facto recognition of nuclear status (also to drum up domestic support for Kim Jong-un). North Korea has a track record of deceiving the international community, working for years on a secret uranium enrichment programme whose existence it only admitted when confronted with US intelligence in October 2002. Most recently North Korea breached its bilateral 29 February 2012 Leap Day Agreement with the United States in which it agreed, in return for food aid, to return to the negotiating table and institute a moratorium on nuclear weapon and missile tests.

So even after status-enhancement North Korea could continue to export nuclear technology or even nuclear material. And political and economic liberalisation would remain extremely unlikely because the inevitable opening to outside media and business would expose it to unfavourable comparison with the South.

The discernible and expected responses of the United States, China, South Korea and Japan to North Korea's continuing nuclear arms programme give reason to fear for peace and stability in the region.

A build-up of additional US military forces in the region is foreseeable, as is the risk of acceleration of the regional arms race. Recognition of the North Korean nuclear weapons capability would further reinforce that trend.

While US Defence Secretary Chuck Hagel's 15 March announcement of another fourteen ground-based interceptors to be deployed in Alaska to protect the continental United States may have been directed ostensibly against the threat of North Korean long-range missiles, these missile defence systems are equally suited to intercepting Chinese ICBMs. China must fear an expansion of US missile defence systems that would undermine its own nuclear deterrent, and could seek to address that deficit by upgrading its ballistic missile systems.

The strengthening of South Korean and Japanese security ties to the United States in response to North Korea's nuclear threats also runs counter to China's strategic interests. To reinforce the US nuclear umbrella both countries would seek closer cooperation with the United States. Beijing could interpret this as an element of an American containment strategy.

On the other hand, the United States would risk harming its alliances with South Korea and Japan if it accepted North Korea's nuclear capacity. Both allies could harbour increasing doubts about the credibility of US defence commitments, and would be increasingly likely to expand their conventional arsenals in coordination with the US, or even to develop their own nuclear arms unilaterally. Japan has already mastered the nuclear fuel cycle, South Korea is seeking that capacity. After the third North Korean nuclear test it required considerable US efforts to persuade Seoul to postpone a decision about restarting uranium enrichment and plutonium reprocessing until 2016.

North Korea's Position in the nuclear Non-Proliferation Regime

As an outsider under the NPT, North Korea stood under blanket suspicion from the outset. North Korea joined the treaty in 1985, in exchange for Soviet technology transfer for its nuclear plant at Yongbyon, but did not accept the IAEA inspections prescribed under the NPT until 1992. These revealed that North Korea had supplied false information and had secretly separated plutonium.

North Korea first declared its withdrawal from the NPT on 12 March 1993, during the first Korean nuclear crisis. Under Article 10 of the Treaty, withdrawal is permissible if “extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests” of the country. Notice of withdrawal and an explanation must be given to all treaty members and the UN Security Council at least three months in advance.

North Korea “suspended” its withdrawal one day before expiry of the three-month period, but revoked the suspension on 10 January 2003, in the course of the second nuclear crisis, and declared the country ceased to be a member of the NPT with effect from 11 January 2003.

Certain NPT state parties argue that North Korea's withdrawal declarations were formally inadmissible, for example because it had no right to simply interrupt the three-month period of notice in 1993. As far as its position under the NPT is concerned, North Korea is consequently in diplomatic limbo.

If the international community accepted North Korea's withdrawal from the NPT it would be on a par with Israel, India and Pakistan, all of which also possess nuclear weapons but (unlike North Korea) never joined the NPT. That would do lasting harm to the non-proliferation regime, destroying the trust of the non-nuclear-weapon states in the international community's determination to take effective, consistent and assertive action against rule-breakers. It would create the impression that North

Korea was being rewarded for developing nuclear arms secretly and in violation of its treaty obligations, and for its course of military confrontation. This would send the wrong message, especially to Iran which is also on the threshold of a nuclear weapons capability.

In response to the North Korean declaration of withdrawal a number of (above all Western) states called for the right of withdrawal from the NPT to be reformed. The European Union proposed that the UN Security Council should automatically discuss any withdrawal notice, and that even after withdrawal safeguards obligations should remain in place on all nuclear technology acquired during NPT membership. Recognition or tacit acceptance of the North Korean withdrawal would undermine these efforts, as it is hardly conceivable that the other 189 NPT members would accept higher hurdles for themselves.

North Korea's status in the IAEA also remains ambivalent. On 13 June 1994, in response to the IAEA's adoption of sanctions, North Korea announced it was withdrawing from the organisation. But under Article 3 of the NPT all non-nuclear-weapon signatories must conclude a comprehensive safeguards agreement with the IAEA and allow international inspections of all their nuclear facilities and sensitive materials. North Korea now argued that its suspended withdrawal gave it a special position in the NPT, with no obligation to accept inspections. The IAEA insists that its safeguards agreement with North Korea remains in effect whether or not the country is a member of the IAEA.

If the international community were to accept North Korea's interpretation, future monitoring of nuclear activities (and verification of possible future disarmament steps) would require the negotiation of a new agreement. As for the NPT nuclear-weapon states (China, France, Russia, United Kingdom and United States) and the de facto nuclear powers India, Israel and Pakistan, such inspections would occur

on a voluntary basis and be limited to specific facilities. In other words, international practice would confirm North Korea's special status as the first state to successfully leave the NPT and acquire nuclear weapons.

Option 2: Continuity in Dealings with North Korea

If one accepts the weight of arguments against recognising North Korea as a nuclear power, there are logical consequences. In this case current policy should be maintained, demanding complete nuclear disarmament and renunciation of its nuclear programme as a precondition for talks and continuing to refuse to recognise its withdrawal from the NPT.

► Pro: Strengthens the Non-Proliferation Regime

There are good reasons to regard any concession to North Korea with great scepticism. The negative experience of the past makes it difficult to place trust in agreements with the country, and if one takes the view that North Korea's domestic and foreign policy is firmly rooted in its political and social system there is little reason to believe the regime could be reformed or tamed. If this scepticism turns out to be justified, the international community's requests will remain unfulfilled. In this context, America's hard stance in the nuclear conflict lends credibility to its promises to its allies and counteracts possible Japanese and South Korean nuclear ambitions.

Maintaining existing positions would underline the continuity and coherence of the international community's policy towards treaty violators. The message to potential proliferators would be clear: rule-breakers pay a price, reneging on international obligations does not pay. Or at least brings no enhancement of international status.

The Obama administration's policy of "strategic patience" keeps the option of

North Korea returning to the NPT and IAEA open. Even if the latest escalation makes such a move unlikely, in the longer term a North Korean transformation and renunciation of nuclear arms cannot be excluded.

A policy of continuity would also have the advantage of upholding the basic principles of international relations in dealings with the country, in particular the UN's sanctions resolutions. Although these have not prevented North Korea acquiring nuclear capacity they have impeded the import of critical technologies and as such slowed the North Korean nuclear and missile programmes and increased their cost.

► Contra: Inflames Regional Tensions

Insisting on denuclearisation ignores the fact that North Korea already has a nuclear weapons capability. If there was any prospect of external pressure and precarious living conditions causing the regime in Pyongyang to collapse, such a policy would nonetheless make sense. But there is little sign of such developments.

The problem here is that the apparently unbridgeable gap between rhetoric and reality restricts the political and diplomatic options for the United States and its partners. As long as the international community insists on North Korea renouncing nuclear weapons as a precondition for talks, there is no possibility of agreeing measures to defuse the tense situation.

Worse still, in the past North Korea has pushed forward with its nuclear programme most strongly during phases of diplomatic standstill, and is likely to do the same in future. To that extent, insisting on nuclear disarmament indirectly exacerbates regional tensions and increases the risk of a military escalation.

For a Pragmatic Middle Way

Both absolute insistence on nuclear disarmament and absolute forbearance of that demand create more problems than benefits. It would therefore make sense to pursue a middle way where the demand is maintained without placing it at the centre of direct talks.

In the multilateral framework the international community should continue to treat North Korea as an NPT state party, and thus as a non-nuclear-weapon state. This would avoid harming global efforts to control nuclear technologies. In the context of United Nations, NPT and IAEA, demands for fulfilment of international safeguards obligations under Article 3 of the NPT should be upheld, and existing Security Council resolutions and sanctions should be maintained. The lifting of sanctions requires complete, irreversible and verifiable renunciation of all nuclear weapons and programmes and the ending of missile tests.

Bilaterally and plurilaterally, the United States and other negotiating partners could adopt a more flexible stance on the North Korean nuclear programme to overcome the diplomatic stalemate and improve their political options. There is no need for the demand for comprehensive nuclear disarmament to be a precondition for direct talks or the immediate objective of negotiations. This would make it easier to defuse military tensions, keep communication channels open, de-escalate the conflict, and preserve peace in East Asia.

Such a policy of conciliation would expose the United States in particular to charges of “duplicity”. Middle Eastern states have long criticised the United States and its allies for giving Israel preferential treatment by tacitly accepting its nuclear arms. Iran, especially, would likely have a propaganda field day if the negotiating partners were to set aside their demand for North Korean disarmament. This criticism could be countered by pointing out that at the multilateral level the demand for nuclear disarmament and North Korea’s

return to the NPT and the IAEA is being upheld. The legal position would thus remain fundamentally unaltered.

Goals of a Dialogue

The United States has already signalled flexibility concerning the future negotiating format and has not ruled out direct talks. North Korea is also willing to talk, as Kim’s special envoy Choe Ryong-hae indicated to the Chinese leadership at the end of May.

Negotiations with North Korea can only be conducted in the knowledge that one is not holding too many trumps. The possibilities of persuading North Korea to back down through diplomatic pressure, sanctions or military means are limited, while North Korea has many means to harm China, South Korea and even the United States. Where direct talks are concerned, the United States and other possible negotiating partners should therefore formulate a catalogue of clear demands in return for de facto recognition of nuclear status.

In the short term North Korea must make a contribution to military de-escalation. The reopening of the hotline and other confidence- and security-building measures are important to reduce the risk of an unintentional outbreak of military hostilities. Participating states could agree to exchange information about planned military manoeuvres, or perhaps even observers. It would also be essential for North Korea to promise not to conduct any more nuclear or missile tests, in order to restrain its progress in operationalising nuclear capabilities.

Agreement not to export sensitive technologies must be made an absolute precondition for de facto recognition of nuclear capacity. In the past North Korea has supplied missiles to Iran and Pakistan, possibly also nuclear technology to Syria. There remains a risk of it selling nuclear technology to other states or even to non-state actors. If North Korea’s status were to be enhanced,

the regime could have an interest in presenting itself as a “responsible” actor.

In the medium term, concrete progress on the issues of confidence-building, a test moratorium and non-proliferation could make it easier to move on to other issues of mutual interest. To avoid endangering such a course, the nuclear problem should initially remain bracketed out. In the past, energy questions, humanitarian aid and economic cooperation have already been the subject of bi- and multilateral agreements, where Pyongyang hoped above all for foreign development aid while the international community prioritised reducing human suffering. In future, promoting a process of internal transformation through concrete cooperation should be added to the objectives, as a lasting solution to the North Korea question can only be expected if the country changes internally. On the basis of such cooperation, questions of nuclear disarmament could also be addressed in the longer term.

What Role for Europe?

Peaceful development in North-East Asia is a central German and European interest. The voice of Europe must also make itself heard in human rights questions. Resolution of the nuclear conflict with North Korea is primarily about averting a military – or even nuclear – escalation that would have drastic humanitarian consequences. Given the close linkages in the global economy, North-East Asia and Europe would be hit hard by any such conflict. Moreover, the treatment of North Korea will affect the development of the nuclear non-proliferation regime. Here, strengthening the NPT and the IAEA remains an important objective of German foreign and security policy.

Europe’s influence on the shape of direct talks on the North Korean nuclear programme has been limited, and that is unlikely to change fundamentally. Germany and the European Union backed the KEDO agreement financially, and should indicate to the parties that they would similarly sup-

port any new agreement. Europe will play an important role – not only out of self-interest – in integrating North Korea in the global economy and possibly even funding development there. Germany can offer to share its Cold War insights and experience of confidence- and security-building measures with the regional actors. In the interests of enhancing European credibility it might also make sense to conduct this transfer of knowledge and experience jointly with the former adversary Russia.

But Germany and the European Union are more important as actors in the multilateral non-proliferation regime. Here it must be ensured that global disarmament and arms control efforts are not undermined in the course of resolving the nuclear conflict. From the European point of view, efforts to accommodate North Korea must respect international norms and rules, meaning that North Korea cannot be formally recognised as a nuclear-weapon state. Irreversible and verifiable nuclear disarmament must remain the international community’s supreme goal. But aside of these principles, Europe should put its weight behind any pragmatic moves to defuse the confrontation.

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